

California Integrated Waste Management Board

Board Meeting

March 15-16, 2005

AGENDA ITEM 29 (Revised)

ITEM

Consideration Of A New Full Solid Waste Facilities Permit (Transfer/Processing Station) For The California Waste Solutions Material Recovery Facility, Santa Clara County

I. ISSUE/PROBLEM STATEMENT

1. This item requests Board concurrence on the new California Waste Solutions Material Recovery Facility solid waste facilities permit.
2. Pursuant to Public Resources Code, Section 44009, the Board has 60 calendar days to concur in or object to the issuance of a full solid waste facilities permit. The proposed permit for this facility was received February 15, 2005. The date for submittal of a proposed permit that would allow a full 60 days for Board review prior to the March Board meeting was January 15, 2005. The Board has until April 16, 2005 to act on this permit. When the proposed permit package was received, the package contained all of the items required in 27 CCR, Section 21685.

II. ITEM HISTORY

- Compliance History:
2004 – No violations (November and December)
2005 – No State Minimum Standards violation, one permit violation

Details concerning the above permit violation are explained on page 3, in the Consistency with State Minimum Standards (SMS) section of this agenda.

III. OPTIONS FOR THE BOARD

The Board may decide to do one of the following:

1. Concur in the issuance of the proposed permit as submitted by the LEA.
2. Object to the issuance of the proposed permit as submitted by the LEA and direct staff to inform the LEA in writing of the reason for objection.
3. Take no action on the proposed permit as submitted by the LEA. If the Board chooses this option, the Board shall be deemed to have concurred in the issuance of the proposed permit 60 days after the Board's receipt of the permit.

IV. STAFF RECOMMENDATION

~~Staff will recommend concurrence with the proposed permit, if the permit is determined to be consistent with CEQA documentation.~~ Staff recommend that the Board adopt option one, concurrence in the issuance of the proposed permit.

V. ANALYSIS

A. Key Issues and Findings

Facility Name: California Waste Solutions Material Recovery Facility
Facility No. 43-AN-0024

Facility Type: New Large Volume Transfer/Processing Station
Location: 1005 Timothy Street, San Jose, California

Setting:	The surrounding land uses are zoned light industrial and heavy industrial. The site is bounded to the westerly side is an industrial manufacturing and service businesses, northwesterly is a yard and green waste transfer facility, immediately adjoining the site to the north and northeast is a self storage site. The nearest residence is approximately 1,150 feet to the south.
Operational Status:	Active, unpermitted
Proposed Acreage:	3.57 acres
Proposed Hours of Operation:	Receipt of materials: 5:00 6:00 a.m. to 11:00 7:00 p.m., Monday – Friday with occasional Saturdays <u>Monday – Saturday.</u> Operations: 24 hours, seven days a week
Proposed tonnage:	530 tons per day
Proposed Traffic Volume:	304 Vehicles Per day
Operator:	Mr. Victor Duong, Vice-President California Waste Solutions, Inc.
Owner:	Mr. Victor Duong, Vice-President Duong Family Trust
LEA:	Mr. Mike Hannon, Deputy Director City of San Jose Department of Planning, Building, and Code Enforcement

Background

The facility began operating as a recycling center in the early 2002. Recycling centers are exempt from solid waste facility permit requirements. The operations are housed in a 51,300 square foot building. The facility serves the City of San Jose and processes material received through the City's curbside recycling program. Incoming material is unloaded in the receiving area. A loader places the material on to a conveyor that transports the materials to various sorting and processing areas. The sorted materials are conveyed to storage bunkers before transport to a baler. Bales are loaded into containers for transport to the market. Although the facility receives loads high in recyclables, the residual material is over ten percent (10%) which means the facility requires a solid waste facility permit to operate. Please refer to the Consistency with SMS section of this agenda item for further background information.

Key Issues

The proposed new permit is to allow the following:

- operation of the California Waste Solutions Material Recovery Facility as a large volume transfer/processing facility;
- maximum traffic volume of 304 vehicles per day;
- maximum daily tonnage of 530 tons per day;
- maximum of 3.57 acres; and
- receive only material collected for recycling, no mixed solid waste.

LEA Certification:

The LEA has indicated the following:

- The permit application package is complete and correct;
- The Transfer/Processing Report (TPR) meets the requirements of Title 14, CCR, Section 18221.6; and
- The proposed permit is consistent with and supported by the existing California Environmental Quality Act (CEQA) documentation.

Staff Analysis:

The following table summarizes Board staff's review and analysis of the proposed permit application package:

43-AN-0024 Summary of Board Findings	Accept- able	Unaccept- able	To Be Deter- mined	Not Applic- able	See Details Below
CIWMP Conformance (PRC 50001)	√				<i>1</i>
Consistency With State Minimum Standards	√				<i>2</i>
TPR Completeness	√				<i>3</i>
California Environmental Quality Act	√		√		<i>B</i>

1. Conformance with County Integrated Waste Management Plan (CIWMP):
Public Resources Code (PRC) Section 50001 requires that any new or expanded non-disposal facility be identified in the applicable jurisdiction's Non-disposal Facility Element (NDFE) for the proposed permit. Staff of the Board's Office of Local Assistance (OLA) have determined that the California Waste Solutions Material Recovery Facility is identified in the County's NDFE, and therefore, find that the proposed permit is in conformance with the County's NDFE.
2. Consistency with State Minimum Standards (SMS):
Board staff conducted an inspection of the facility with the LEA on February 2, 2005 and found that the facility operation was consistent with the applicable State Minimum Standards (SMS). However, Board staff determined one violation of Public Resource Code, Section 44002 – Operating without a permit.

Title 14, Section 17402.5(d) defines a recycling center as a location that only receives source separated material, does not have more than 10% residual, and receives less than 1% of putrescible wastes. Operations which do not meet the definition of a recycling center must comply with the requirements of transfer/processing facilities.

Records indicate that the residual amount of solid waste in the source separated recyclables received at the facility has been over 10% since July 2002. The facility operator was unable to reduce the level of residuals.

When it was noted that CWS continually produced residuals in excess of 10%, it was determined to be a transfer/processing station and as such required a solid waste facility permit.

On June 18, 2003 the LEA issued a Cease & Desist Order (Order) for violation of PRC Section 44002-Operating without a permit. At the time, the operator's records showed residual ranging from 21% to 43% per month. Additionally, the City of

San Jose cited violations relating to planning and building codes, fire codes, and hazardous materials storage. The operation ceased for a short period of time. On February 27, 2004 the City and CWS entered into a Permanent Injunction and Final Judgment Pursuant to Stipulation (Attachment 4) which required CWS to address the violations and obtain a solid waste facility permit.

In September 2004, Board staff noted the LEA had not provided any inspection reports for the site after it was determined to be a solid waste facility. Board staff directed the LEA to perform monthly inspections of this site. The LEA began conducting monthly inspections in November 2004.

3. TPR Completeness:

Board staff have reviewed the Transfer/Processing Report dated December 2004 and determined the document meets the requirement of 14 CCR, Section 18221.6.

B. Environmental Issues

1. California Environmental Quality Act (CEQA)

~~At the time this item was prepared, Board staff had not completed their review. Staff determination will be presented both at the Permitting & Enforcement Committee meeting on March 7, and the Board meeting on March 15-16, 2005. The City of San Jose Department of Planning, Building and Code Enforcement (City), acting as lead agency, circulated the following environmental documents for the proposed issuance of full Solid Waste Facility Permit (SWFP) No. 43-AN-0024 for the California Waste Solutions Material Recovery Facility Transfer Station:~~

- Mitigated Negative Declaration, State Clearinghouse No. 2001122092 had a public review period from December 24, 2001 to January 22, 2002. The Mitigated Negative Declaration was adopted by the City of San Jose on January 22, 2002. The Mitigated Negative Declaration supports incoming facility tonnages of up to 530 tons per day of curbside recyclables, facility hours for receipt of recyclables of 6:00 a.m. to 6:00 p.m. Monday through Saturday, and processing/sorting of materials and facility maintenance of 24 hours per day, seven days per week. An Addendum was filed on December 3, 2004.

The Local Enforcement Agency, City of San Jose, has provided a finding that the proposed SWFP is consistent with State Minimum Standards for Solid Waste Handling and Disposal.

Based on information above, Board staff recommends that the environmental document cited above is adequate for the Board's environmental evaluation for those project activities which are within the Board's expertise and/or powers, or which are required to be carried out or approved by the Board.

2. Staff is not aware of any impacts regarding other state agencies, or cross-media impacts related to this item.

C. Program/Long Term Impacts

Based on available information, staff is not aware of any program impacts related to this item.

D. Stakeholder Impacts

Based on available information, staff is not aware of any stakeholder impacts related to this item.

E. Fiscal Impacts

No fiscal impact to the Board results from this item

F. Legal Issues

Based on available information, staff is not aware of any legal issues related to this item.

G. Environmental Justice

Community Setting:

The surrounding land uses are zoned light industrial and heavy industrial. The site is bounded to the westerly side by industrial manufacturing and service businesses, northwesterly is a yard and green waste transfer facility, and immediately adjoining the site to the north and northeast is self storage site. The nearest residence is approximately 1,150 feet to the south. California Waste Solutions Material Recovery Facility is located in Census Tract 5043.18 in the 2000 U.S. Census Bureau Database for Santa Clara County.

According to the 2000 census, the population of Census Tract 5043.18 consists of the following:

US Census Bureau Data Census 2000 – Race, Census Tract 5043.18 County of Santa Clara, California	All Ages	
	Number	Percent
White	2802	64.9
Black or African American	102	2.4
American Indian and Alaska Native	33	0.8
Asian	1,203	27.9
Native Hawaiian & Other Pacific Islander	33	0.8
Some other race	12	0.3
Two or more races	127	2.9
Total Population	4,312	100

30.4% of the population in Census Tract 5043.18 identify themselves as Hispanic or Latino. The median household income of the residents in the 2000 census was \$52,065 and approximately 9.4% of the families were below the poverty level.

Community Outreach:

Because this is a new solid waste facility permit application, the AB 1497 requirements regarding a public hearing have not been applied by the LEA.

Environmental Justice Issues:

Based on available information, staff is not aware of any environmental justice issues related to this project.

H. 2001 Strategic Plan

Staff work on new or revised solid waste facility permits is completed as part of Goal 4: Managing and mitigating the impacts of solid waste on public health and safety and the environment and promoting integrated and consistent permitting, inspection, and enforcement efforts.

VI. FUNDING INFORMATION

This item does not require any Board fiscal action.

VII. ATTACHMENTS

1. Site Location Map
2. Site Plan
3. Proposed Permit Number 43-AN-0024
4. Permanent Injunction and Final Judgment by Stipulation
5. Resolution Number 2005-62

VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION

- A. Program Staff:** Beatrice C. Poroli
B. Legal Staff: Michael Bledsoe
C. Administration Staff: None

Phone: (916) 341-6411
Phone: (916) 341-6058
Phone: N/A

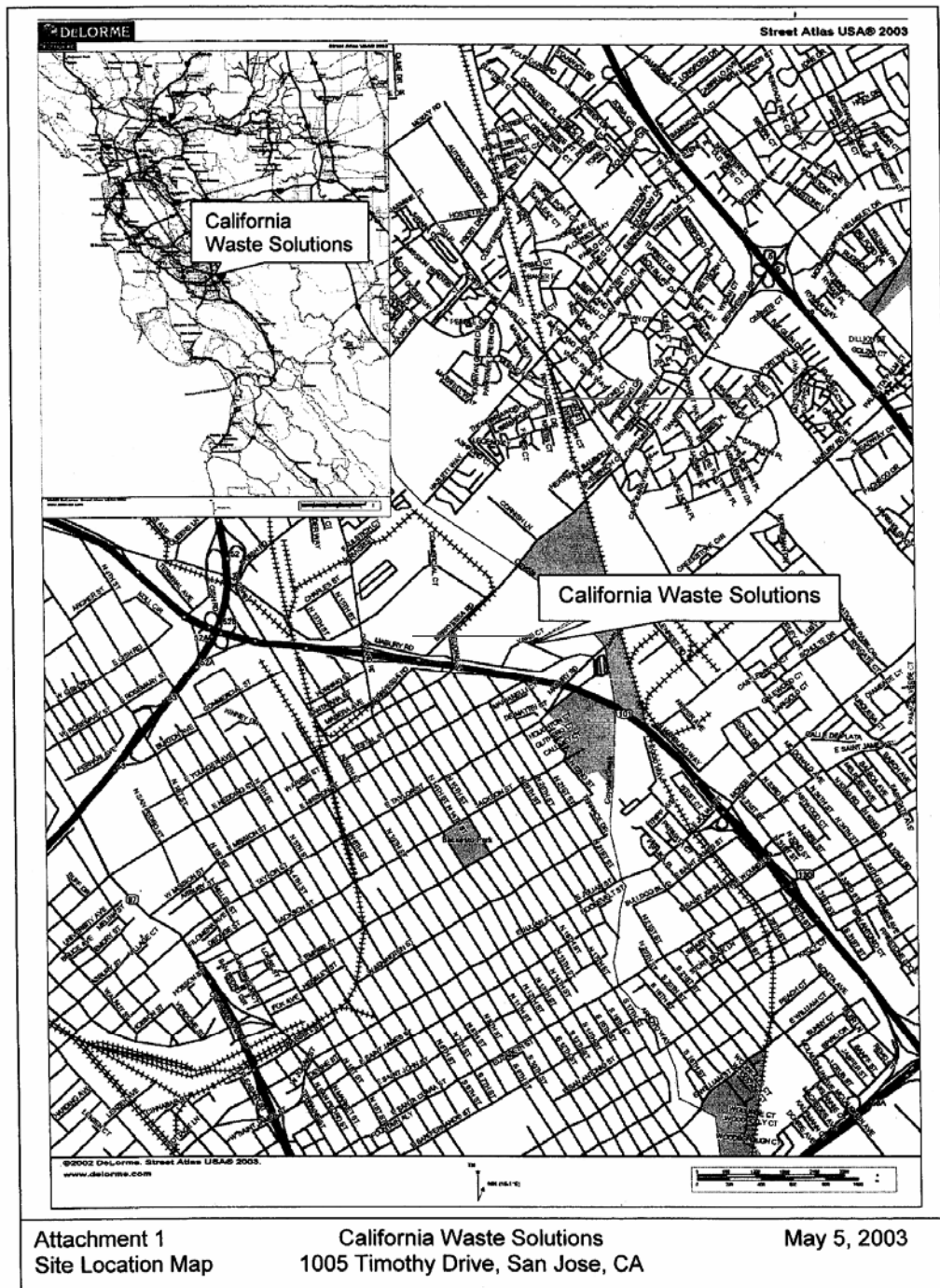
IX. WRITTEN SUPPORT AND/OR OPPOSITION

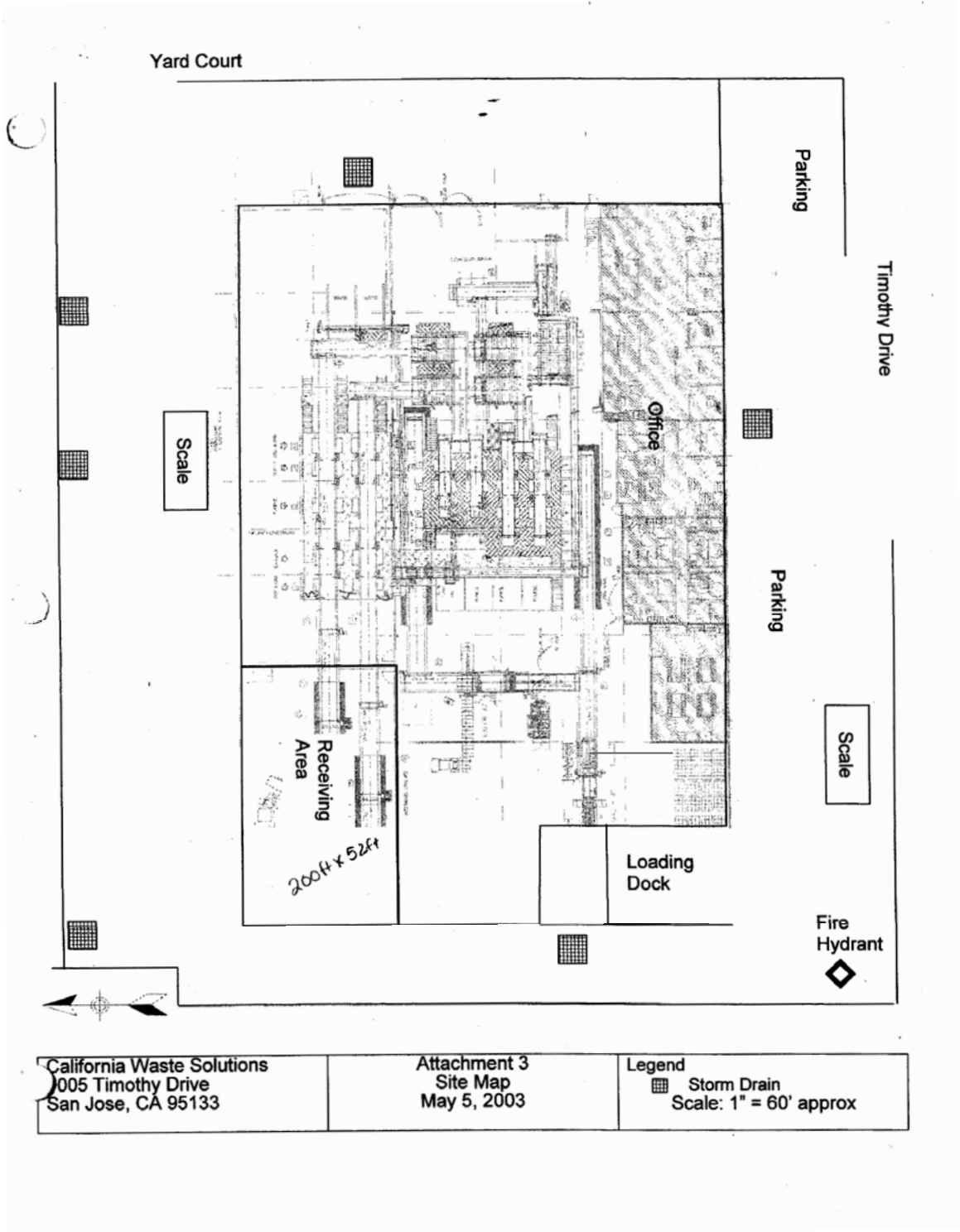
A. Support

Staff had not received any written support at the time this item was submitted for publication.

B. Opposition

Staff has not received any written opposition at the time this item was submitted for publication.





SOLID WASTE FACILITY PERMIT		Facility Number: <div style="text-align: center; font-weight: bold; font-size: 1.2em;">43-AN-0024</div>																																					
1. Name and Street Address of Facility: CALIFORNIA WASTE SOLUTIONS MATERIAL RECOVERY FACILITY 1005 Timothy Street San Jose, California 95133-1043		2. Name and Mailing Address of Operator: California Waste Solutions, Inc. CA Corporation Number: C1522031 1005 Timothy Street San Jose, CA 95133-1043																																					
3. Name and Mailing Address of Owner: Duong Family Investments LLC 1005 Timothy Drive San Jose, CA 95133-1043																																							
4. Specifications: <div style="margin-top: 10px;"> a. Permitted Operations: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Solid Waste Disposal Site <input checked="" type="checkbox"/> Transfer/Processing Facility (MRF) <input type="checkbox"/> Composting Facility (Green Material) </div> <div> <input type="checkbox"/> Transformation Facility <input type="checkbox"/> Other: _____ </div> </div> </div> <div style="margin-top: 10px;"> b. Permitted Hours of Operation: <div style="margin-left: 20px;"> Receipt of Recyclables may occur between the hours of 6am to 7pm Monday through Saturday. Processing/Sorting of material INSIDE the facility and facility maintenance can occur 24/7. No traffic is allowed in or out of facility from 11:30pm to 5am. All vehicle and equipment repair and maintenance is limited to the hours of 6am to 11pm. </div> </div> <div style="margin-top: 10px;"> c. Permitted Maximum Tonnage: <div style="margin-left: 20px;"> 530 TPD Tons per Day </div> </div> <div style="margin-top: 10px;"> d. Permitted Traffic Volume: <div style="margin-left: 20px;"> 304 Vehicles per Day </div> </div> <div style="margin-top: 10px;"> e. Key Design Parameters (Detailed parameters are shown on site plans bearing EA and CIWMB validations): <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th></th> <th style="width: 15%;">Total</th> <th style="width: 25%;">Disposal</th> <th style="width: 25%;">Transfer/Processing</th> <th style="width: 15%;">Composting</th> <th style="width: 20%;">Transformation</th> </tr> </thead> <tbody> <tr> <td>Permitted Area (in acres)</td> <td style="text-align: center;">3.57</td> <td></td> <td style="text-align: center;">530TPD</td> <td></td> <td></td> </tr> <tr> <td>Design Capacity (cubic yds)</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Max. Elevation (Ft. MSL)</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Max. Depth (Ft. MSL)</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Estimated Closure Year</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> </div> <div style="margin-top: 10px; font-size: 0.9em;"> Upon a significant change in design or operation from that described herein, this permit is subject to revocation or suspension. The attached permit findings and conditions are integral parts of this permit and supersede the conditions of any previously issued solid waste facility permit. </div>					Total	Disposal	Transfer/Processing	Composting	Transformation	Permitted Area (in acres)	3.57		530TPD			Design Capacity (cubic yds)						Max. Elevation (Ft. MSL)						Max. Depth (Ft. MSL)						Estimated Closure Year					
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5. Approval: <div style="border-top: 1px dashed black; margin-top: 10px;"> Approving Officer Signature Michael Hannon, Deputy Director Department Planning, Building, & Code Enforcement </div>		6. Enforcement Agency Name and Address: City of San Jose Department of Planning, Building, & Code Enforcement 170 W. San Carlos Street San Jose, CA 95112																																					
7. Date Received by CIWMB: <div style="text-align: center; font-weight: bold; font-size: 1.1em;">MAR 02 2005</div>		8. CIWMB Concurrence Date:																																					
9. Permit Issued Date:		10. Permit Review Due Date:																																					
11. Owner/Operator Transfer Date:																																							

SOLID WASTE FACILITY PERMIT	Facility Number: 43-AN-0024		
12. Legal Description of Facility: The legal description of this facility is contained in <u>Section 1.6</u> , of the <u>Transfer / Processing Report</u> dated <u>December 2004</u> .			
13. Findings: <ul style="list-style-type: none"> a. This permit is consistent with the <u>Santa Clara County</u> Integrated Waste Management Plan approved by the CIWMB on June 19, 2004. Pursuant to Public Resources Code (PRC), Section 50001(a), the location of the facility is identified in the Sixth Amendment to the Santa Clara County, Nondisposal Facility Element (NDFE), approved by the CIWMB on June 15, 2004, by Resolution 2004-171. b. This permit is consistent with the standards adopted by the CIWMB, pursuant to PRC 44010. c. The design and operation of the facility is consistent with the State Minimum Standards for Solid Waste Handling and Disposal as determined by the enforcement agency, pursuant to PRC 44009. d. The City of San Jose Fire Department (CSJ-FD) has determined that the facility is in conformance with applicable fire standards, pursuant to PRC, 44151. Approval date <u>May 28, 2004</u>. e. A Negative Declaration was filed with the State Clearinghouse (SCH #2001122092) and certified by the City of San Jose on <u>January 22, 2002 – Notice of Determination</u>. The Negative Declaration describes and supports the design and operation which will be authorized by the issuance of this permit. A Notice of Determination was filed with the Santa Clara County Recorder's Office on February 2002. An 'Addendum To A Negative Declaration' was prepared (ER04-003) and was approved on December 3, 2004. 			
14. Prohibitions: This permit prohibits the Operator from accepting the following wastes: Source separated solid-waste, hauler commingled solid waste (commingled with recyclable materials by the hauler), hazardous, radioactive, medical (as defined in Chapter 6.1, Division 20 of the Health and Safety Code), liquid, designated, or other wastes requiring special treatment or handling, except as identified in the Report of Facility Information and approved amendments thereto and as approved by the enforcement agency and other federal, state, and local agencies. The terms, Source-Separated and Solid Waste are respectively defined by Title 14, California Code of Regulations, and by California Public Resources Code.			
15. The following documents describe and/or restrict the operation of this facility:			
	Date		Date
TRANSFER PROCESSING REPORT Amendments	12 - 2004 N/A	Preliminary Closure and Postclosure Maintenance Plan	N/A
Waste Discharge Requirements/Order	N/A	Closure Financial Assurance Documentation	N/A
APCD Permit to Operate # 08440	3-02-2004	Operating Liability Certification	N/A
Negative Declaration SCH #2001122092	Jan. 22, 2002	Land Use and/or Conditional Use Permit: CPO1-12-108 Amendments: AD02-463 AD02-560 Lighting AD02-821 AD02-1270 Masonry Wall AD03-304 Outdoor Storage .. AD03-659 Wall/Door AD03-815 Landscape AD03-921 + Outdoor Storage AD03-1253 Vehicle Circulation AD04-594 Recycling Equipment	12-18-2001 05/06/2002 05/30/2002 07/30/2002 11/08/2002 03/28/2003 08/14/2003 09/11/2003 12/19/2003 2/16/2005 Pending
Addendum To A Negative Declaration ER04-003	Dec. 3, 2004		

SOLID WASTE FACILITY PERMIT		Facility Number: 43-AN-0024
16. Self Monitoring: The owner/operator shall submit the results of all self monitoring programs to the Enforcement Agency within 30 days of the end of the reporting period, or with reporting periods as specified. <i>(for example, 1st quarter = January – March, the report is due by April 30, etc.. Information required on an annual basis shall be submitted with the 4th quarter monitoring report, unless otherwise stated.)</i>		
Program	<u>REPORTING</u> Frequency and Agency reported to:	
a. [Tonnage Reporting] The types and quantities (in tons) of waste, including separated or commingled recyclables, entering the facility per day.	Monthly to the LEA	
b. [Tonnage Reporting] the quantity of residual waste in tons, per operating month.	Monthly to the LEA	
c. [Load Checking Program] The operator shall perform load checking for excluded/prohibited wastes and materials, in conjunction with hand and/or machine sorting of materials, and shall maintain a record (log) of the results of the load check program. Operator shall maintain onsite monthly records of quantities of hazardous wastes, Universal Hazardous Wastes, treated and untreated medical wastes, and otherwise prohibited wastes found in the waste stream.	Monthly to the LEA	
d. [Violation Reporting] Operator shall notify the LEA upon receipt of a Notice of Violation from any regulatory agency. In addition, the operator shall notify the LEA within 72 hours, or, when long weekend holidays occur, within 24 hours of resuming operation on the next business day, following written receipt of a Notice of Violation or upon receipt of written notification of complaints regarding the facility, which have been received by other agencies.	Monthly to the LEA	
e. [Complaints] The Operator shall record all complaints regarding this facility and the operator's actions taken to resolve these complaints. All complaints and resolution actions shall be entered in the log of special occurrences. Operator shall notify the LEA within one day if they receive any complaints that could represent a threat to public health and safety or the environment.	As Noted, report to LEA	
f. [Log of Special Occurrences] Reports of all special or unusual occurrences and the operator's actions taken to correct these problems shall be entered into the 'Log of Special Occurrences'.	Recorded in the 'Operating Record' - On Facility Site for review by LEA personnel on the date of occurrence.	
g. [Log of Special Occurrences] The operator shall make entries into the facility 'Log of Special Occurrences' calendar, recording significant incidents of unlawful disposal of prohibited materials and the Operator's actions taken to remove and correctly dispose of excluded/prohibited materials. The record entry shall be made on the date of occurrence. Detailed incident reports, as appropriate, should be entered as part of the log entered in 'f' above. Incidents of fires, injury and property damage accidents, explosions, events involving hazardous wastes, flooding and other unusual incidents will also be recorded.	Recorded in the 'Operating Record' - On Facility Site for review by LEA personnel on the date of occurrence.	

SOLID WASTE FACILITY PERMIT

Facility Number:

43-AN-0024

17. Enforcement Agency (EA) Conditions:

- a. The operator shall maintain a copy of this permit at the facility to be available at all times to facility personnel and to Enforcement Agency (LEA or CIWMB staff) personnel.
- b. The operator shall comply with all State Minimum Standards for solid waste handling and disposal as specified in Title 14, California Code of Regulations.
- c. This facility shall comply with all Federal, State, and Local enactments and requirements including all mitigation measures as specified in any certified environmental document filed pursuant to the Public Resources Code, Section 21031.6.
- d. The Operator shall comply with the terms and conditions of this solid waste facility permit, local land use permit (conditional use permit, etc.), and shall fully conform with the operations plan as described in the Transfer Processing Report dated December 2004.
- e. All equipment, vehicles, debris or roll-off boxes, and materials stored outside of the buildings, shall be located and stored only in permitted areas as described in the most currently approved Transfer Processing Report (TPR), or TPR Amendment, and the Conditional Use Permit (CP97-02-011) and subsequent amendments.
- f. The operator shall provide additional information concerning the Design and/or Operation of this facility upon the request of the Enforcement Agency personnel or the CIWMB. Additional information concerning the design and/or operation of the facility shall be furnished within the time frame specified by the Enforcement Agency (LEA).
- g. The operator shall maintain a log of special/unusual occurrences. This log shall include, but is not limited to, fires, explosions, the discharge and disposition of hazardous or unpermitted wastes, and significant injuries, accidents or property damage. Each log entry shall be accompanied by a summary of any actions taken by the operator to mitigate the occurrence. The log shall be available to site personnel and the EA at all times.
- h. The operator shall install and maintain easily visible signs at each point of access from a public road stating: 1) the name of the facility; 2) that the facility is not open to the general public, and, 2) identifying the facility name and the location for the nearest public operations or facility (T14, CCR, §17409.4(a)).
- i. The Operator shall provide signage at each entrance from public roads providing the message to the effect that: "All Loads Must Be covered/tarped to Prevent Litter and Dust". The Operator and Operations staff shall make every effort to enforce this standard.
- j. The maximum permitted daily tonnage, for all incoming materials for this facility is 530 tons per day, and shall not receive more than this amount without the prior application for, and receipt of, a revised Solid Waste Facility Permit prior to initiation of any operation in excess of 530 tons per day.
- k. The operator shall comply with all notices and orders issued by any responsible agency designated by the Lead Agency to monitor the Mitigation Measures contained in any of the documents referenced within this permit pursuant to the Public Resources Code section 21081.6
- l. The Operator shall utilize specific safety equipment and implement safety measures that may be required as determined by any applicable Injury and Illness and Prevention Plan ('I.I.P.P.').
- m. The Operator shall maintain and make available, upon request of the enforcement agency, records of employee training for Health and Safety Operation and maintenance of the facility. These Operating Records shall be maintained at the Facility and be available for review by the LEA and other authorized Regulatory Agencies.
- n. The operator shall maintain, at the facility, accurate daily records of the weight and/or volume of recyclable and waste materials received. These records shall be available to both LEA and CIWMB personnel and shall be maintained for a period of at least one year. Facility Gate and/or Scale Attendants shall be certified by the responsible Government Agency, as Certified Weigh-Masters, or shall maintain equivalent certification as approved in writing by the LEA. The Operator shall assist the LEA or CIWMB to utilize these records, as required by the Enforcement Agency, to monitor maximum daily tonnage compliance.

SOLID WASTE FACILITY PERMIT	Facility Number: 43-AN-0024
<p>17. Continued _ Enforcement Agency (EA) Conditions:</p> <ul style="list-style-type: none"><p>o. The Operator shall maintain a copy of the LEA approved Transfer Processing Report on the facility site. The operator shall utilize Best Management Practices in the conduct of on-site activities.</p><p>p. Effective litter, dust and odor control measures shall be maintained at all times to prevent public nuisance or violations of standards. Where violations have occurred, the LEA may require the long term use of mobile cleaning systems such as street sweepers and/or mobile vacuum trucks. The facility operator shall provide litter control as described in the Transfer Processing Report (December 2004), or as directed by the LEA, and shall remove for legal disposal any litter, waste, or other illegally disposed materials along roadways within 250' of the entrance and exit of this facility. NOTE: Illegally disposed Medical Wastes, or Hazardous Wastes shall be removed or reported to the appropriate agency in compliance with applicable laws and standards governing their handling and disposal.</p><p>q. Pile Heights, for all materials including recyclables, bales, waste and final product storage, shall not exceed the limitations specified in the local land-use permit and addendums, or in conformance with limits imposed by the City of San Jose Fire Department.</p><p>r. This permit is subject to review by the EA and may be suspended, revoked, or revised at any time for sufficient cause as determined by the Enforcement Agency.</p><p>s. The Enforcement Agency reserves the right to suspend or modify waste receiving and handling operations when deemed necessary due to an emergency, a potential health hazard, or the creation of a public nuisance.</p><p>t. Any change that would cause the design or operation of the facility not to conform to the terms and conditions of this permit is prohibited. Such a change may be considered a significant change, requiring a permit revision. In no case shall the operator implement any change without first submitting a written notice of the proposed change, in the form of an RFI amendment, to the EA at least 180 days in advance of the change (or as required by applicable state statutes and regulations).</p><p>u. Upon a change in the owner or operator, the <u>LEA shall be notified 45 days</u> prior to the change so that the LEA may make a determination to revise the permit pursuant to California Code of Regulations, Title 27, Section 21630.</p><p>v. This facility must comply with all applicable Federal, State and local enactments, laws and regulations, including the State Minimum Standards established by the CIWMB, California Code of Regulations - Title 14, and CCR Title 27, administered locally by the City of San Jose Local Enforcement Agency. The Local Enforcement Agency is the City of San Jose, Department of Planning, Building, and Code Enforcement. Additional information concerning the design and operation of the facility shall be furnished upon request and within the time frame specified by the EA.</p><p>w. All Facility operations shall be conducted in accordance with the operations and design described in the RFI, as approved and/or amended by the LEA, and in compliance with all State Statutes, Regulations, City of San Jose Municipal Codes and Ordinances, and Land Use Permits.</p><p>x. No residual will remain on site for more than 48 hours.</p><p>y. The Facility operator shall provide water misting equipment and effective dust control and cleaning as necessary in order to control nuisance dust resulting from Facility operations, as determined by the LEA. The facility operator shall provide watering and cleaning equipment as frequently as necessary in order to maintain dust free conditions.</p><p>z. The EA reserves the right to suspend or modify waste receiving and handling operations when deemed necessary due to an emergency, a potential health hazard, or the creation of a public nuisance.</p>	

43-AN-0024

1 RICHARD DOYLE, City Attorney (#88625)
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8 Attorneys for PEOPLE OF THE
9 STATE OF CALIFORNIA and
10 LOCAL ENFORCEMENT AGENCY

ENDORSED

2004 FEB 27 AM 8:56

KIM TORRE, CEO
SUPERIOR COURT OF CA.
CO. OF SANTA CLARA
BY A. GALVAN DEPUTY

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

12 PEOPLE OF THE STATE OF
13 CALIFORNIA, ex rel., CITY ATTORNEY
14 OF THE CITY OF SAN JOSE and
15 CITY OF SAN JOSE AS LOCAL
16 ENFORCEMENT AGENCY FOR THE
17 CALIFORNIA INTEGRATED WASTE
18 MANAGEMENT BOARD,

19 Plaintiffs,

20 vs.

21 DUONG FAMILY INVESTMENT, LLC;
22 CALIFORNIA WASTE SOLUTIONS,
23 INC.; DAVID DUONG, an individual and
24 doing business as California Waste
25 Solutions; VICTOR DUONG, an
26 individual and doing business as
27 California Waste Solutions; and Does 1
28 through 100, inclusive,

Defendants.

NO. 1-03-CV002609

PERMANENT INJUNCTION AND
FINAL JUDGMENT PURSUANT TO
STIPULATION

PERMANENT INJUNCTION AND FINAL JUDGMENT BY STIPULATION

IT IS HEREBY STIPULATED between the Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA and LOCAL ENFORCEMENT AGENCY (hereinafter "Plaintiffs"), and Defendants DUONG FAMILY INVESTMENT, LLC and CALIFORNIA WASTE SOLUTIONS, INC. (hereinafter Defendants), by and through Defendants' attorney, Richard Norris, Esq.,

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PERMANENT INJUNCTION AND FINAL JUDGMENT
PURSUANT TO STIPULATION

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INITIALS

[Signature]

1 and it appearing to the Court that the parties have stipulated and consented to the entry of
2 the Permanent Injunction And Final Judgment Pursuant To Stipulation herein, prior to the
3 taking of the proof, without trial or adjudication of any issues of fact or law and without
4 admission of any of the allegations herein; and this Court having considered the matter, the
5 pleadings, the evidentiary declarations and exhibits, and the Permanent Injunction And Final
6 Judgment Pursuant To Stipulation herein, and for good cause appearing therefore,

7 **IT IS ORDERED THAT:**

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9 1. The individuals and defendants other than CALIFORNIA WASTE SOLUTIONS,
10 INC. and DUONG FAMILY INVESTMENT, LLC (hereinafter collectively "CWS"), including
11 David Duong and Victor Duong, shall be and are hereby dismissed as parties to the
12 Complaint and the Cease and Desist Order.

13 2. CWS shall incur such expenses as may be reasonably necessary to perform as
14 provided herein.

15 3. CWS shall pay the City \$150,000 in settlement of any and all claims related to
16 the Complaint and the Cease and Desist Order. The \$150,000 includes, but is not limited to,
17 reimbursement by CWS to the City for costs incurred by City to date on compliance and
18 related issues, as well as anticipated future monitoring costs. CWS's payment shall be in
19 three (3) equal installments of \$50,000 due on January 30, 2004, December 1, 2004 and
20 December 1, 2005. The City shall have the right to secure a money judgment for the unpaid
21 balance of the amounts due hereunder in the event of a default by CWS in the payment of
22 any sums due.

23 4. CWS shall complete an Operational Plan that is consistent with business
24 activities and provide same to City for City's review and approval which approval shall not be
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1 unreasonably withheld. The CWS Operational Plan shall be provided to City no later than
2 February 1, 2004.

3 5. CWS shall perform in accordance with the City approved Development Plans
4 also known as Approved Plan Sets, and any and all City approved Adjustments or
5 Amendments thereto including, without limitation, the Operational Plan. The Operational
6 Plan shall set forth, in general terms, the operational and contingency plans in the lawful
7 operations of the business. The Operational Plan will be subject to reasonable revisions over
8 time to conform to conditions, incorporate new operations, techniques and practices, and
9 facilitate the acceptance of materials from other sources. Revisions of CWS' Operational
10 Plan shall be subject to the approval of the City which shall not be unreasonably withheld.
11 The terms of the Settlement Agreement shall be incorporated into the Operational Plan so
12 that the Operational Plan includes, without limitation, provision for such specific compliance
13 strategies as the introduction of additional odor control devices, changing the hours of
14 operation subject to existing labor agreements, closing the gates of the CWS facility located
15 at 1005 Timothy Drive, San Jose, California (the "Facility") to cut off the inflow of materials,
16 load rejection, and running a second shift as means to achieve compliance with CWS'
17 Conditional Use Permit and other permits and authorizations for its Facility and applicable
18 law and regulation. CWS will make a commercially reasonable effort to limit the amount of
19 material remaining on the floor of its facility and the duration for which it remains. CWS shall
20 operate the Facility in a manner that is consistent with industry practice, including, without
21 limitation, consideration of adding an additional shift and, if necessary to finance such
22 operational change, increasing the material throughput.
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1 6. Under the Collection Agreement between Norcal and the City of San Jose and
2 the agreement between Norcal and CWS, CWS recognizes that the City has a right to
3 conduct waste characterization studies of the material at the CWS facility in San Jose. CWS
4 will allow City or its agent reasonable access to the CWS Facility to allow waste
5 characterization studies and will fully cooperate with City or its agent in any waste
6 characterization study.
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8 7. In the event that a waste characterization study indicates, in the reasonable
9 discretion of the City, that CWS's operations are materially responsible for the presence of
10 residual in excess of 10%, then the parties shall meet and confer and CWS shall establish
11 additional capital or operational requirements to reduce residual.
12

13 8. CWS will continue to work in good faith with Norcal Waste Systems (hereinafter
14 "Norcal") and the City to improve the recycling program and to reduce the residual from its
15 sorting operations in San Jose necessary to meet the requirements of law.
16

17 9. CWS shall diligently pursue a Solid Waste Facility Permit for the Facility. City
18 staff will cooperate with CWS in its application. This Settlement Agreement cannot and does
19 not bind the City to approve a Solid Waste Facility Permit for the Facility. CWS shall follow
20 applicable administrative and statutory procedures and the City will consider CWS'
21 application on its merits. The City's staff shall reasonably cooperate with CWS to secure
22 California Integrated Waste Management Board approval for the Solid Waste Facility Permit.
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24 10. For the duration of the injunction arising hereunder, CWS shall be and is
25 hereby enjoined to perform as required herein. This Permanent Injunction shall remain in force
26 and effect for the shorter of two years from the date of issuance of this Permanent Injunction and
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1 the date on which CWS secures a Solid Waste Facilities Permit from the California Integrated
2 Waste Management Board.

3 11. The City may inspect CWS' facility at any time without notice. Following each
4 of the City's inspections of the CWS facility, the City's inspectors and representatives of
5 CWS shall meet together on site at CWS and develop a list of preliminary permit, statutory or
6 regulatory violations, if any, together with the proposed solution and the timing for
7 implementation of the rectification, if applicable. The City shall provide a final list following an
8 inspection, but in the absence of said final list received by CWS within five (5) business days
9 of the inspection, the list shall be presumed to be complete.

11 12. Nothing in the Settlement Agreement shall limit the right of the City to take
12 immediate enforcement action against CWS in the case of an immediate threat to the public
13 health or safety or the health or safety of CWS employees. The City may exercise its
14 reasonable discretion to determine when immediate enforcement action is required. Except
15 as noted in the preceding two sentences, the City shall commence enforcement action
16 against CWS only after the City and CWS shall have met and conferred in a meeting (to take
17 place within five (5) business days of City providing the final list) that will include a
18 representative of the City Attorney's Office and senior management of CWS. City will not
19 take enforcement action against CWS except in the case of an immediate threat to the public
20 safety or the safety of CWS employees (as aforesaid) for any item that is not included on the
21 final list prepared following an inspection.

24 13. The City does not waive any of its enforcement rights.

25 14. In the event that the City commences a meet and confer procedure with CWS,
26 then the City and CWS will endeavor in good faith to agree upon a plan of action to meet the
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1 concerns of the City. In the event that the parties are unable to resolve their differences, the
2 City shall set forth performance requirements for CWS and CWS shall either perform as
3 directed by the City or the City may seek judicial enforcement of the City's requirement(s).
4 The City shall not be obligated to meet and confer prior to taking action against CWS
5 regarding the alleged failure of CWS to perform under a plan of action from any previous
6 violation or meet and confer procedure.

7
8 15. Nothing in this Permanent Injunction And Final Judgment Pursuant To
9 Stipulation is intended to affect City's rights to regulate CWS in accordance with applicable
10 law.

11 16. This Settlement Agreement resolves all of the outstanding claims of the City
12 against CWS as of the date of execution below – including the Complaint and the Cease and
13 Desist Order.

14
15 17. Defendants shall operate CWS in a manner that does not create public or
16 private nuisance as then terms are defined in California Civil Code Section 3479, 3480, and
17 3481.

18 18. Defendants shall obtain all necessary permits from and comply with all
19 applicable requirements of the Bay Area Air Quality Management District, the Local
20 Enforcement Agency of the California integrated Waste Management Board, and the San
21 Francisco Bay Regional Water Quality Control Board, and all other applicable local, State,
22 and Federal agencies, for the use, development, operation, and maintenance of CWS. As
23 part of this provision, Defendants shall maintain conformity with the City-approved building
24 plans for CWS; obtain all required building permits and approvals from San Jose's Building
25 Division; and obtain all required fire and hazardous materials permits and approvals from
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1 San Jose's Bureau of Fire Prevention. Specifically, Defendants shall (1) at all times maintain
2 the twenty feet (20') minimum clearance for emergency vehicle and fire apparatus access at
3 the rear of CWS, in accordance with the City-approved building plans; (2) obtain a Place of
4 Assembly Permit, a Combustible Material Storage Permit, and a High-Piled Combustible
5 Storage Permit for CWS, as required by San Jose's Bureau of Fire Prevention; (3) obtain all
6 required hazardous materials permits and provide a Hazardous Materials Business Plan for
7 any hazardous materials used, handled, or stored at CWS, as required by San Jose's
8 Bureau of Fire Prevention, Hazardous Materials Division; and (4) provide San Jose's Bureau
9 of Fire Prevention with a written manifest of any and all hazardous materials removed from
10 CWS, as required by the Hazardous Materials Division.

12 19. Each party has been represented by counsel in the negotiation and drafting of
13 this Settlement Agreement and no inference shall arise based upon which of the parties
14 drafted this Settlement Agreement.

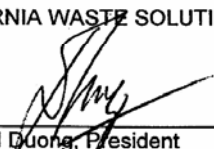
16 20. Each party shall bear its own costs and attorneys' fees incurred in the
17 negotiation and drafting of this Settlement Agreement.

18 **IT IS SO STIPULATED.**

19 For Defendants DUONG FAMILY INVESTMENT, LLC and CALIFORNIA WASTE
20 SOLUTIONS, INC.

22 Dated: 2-17, 2004.

23 CALIFORNIA WASTE SOLUTIONS, INC.

24 By 
25 David Duong, President
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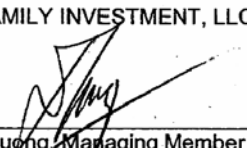
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PURSUANT TO STIPULATION

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1 Dated: 2-17, 2004.

2 DUONG FAMILY INVESTMENT, LLC

3
4 By 
5 David Duong, Managing Member

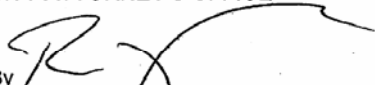
6 Dated: 2/23/04, 2004.

7 CITY OF SAN JOSE


8
9 By 
10 Ron Gonzales, Mayor

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12 APPROVED AS TO FORM.

13 CITY ATTORNEY'S OFFICE

14
15 By 
16 Richard Doyle, City Attorney
17 Attorneys for Plaintiffs,
18 PEOPLE OF THE
19 STATE OF CALIFORNIA and
20 LOCAL ENFORCEMENT AGENCY

21 ARCHER NORRIS

22 By 
23 Richard B. Norris
24 Attorneys for Defendants
25 CALIFORNIA WASTE SOLUTIONS, INC.

26 IT IS SO ORDERED.

27 Dated: FEB 27 2004

28 **SOCRATES P. MANOUKIAN**
JUDGE OF THE SUPERIOR COURT

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PERMANENT INJUNCTION AND FINAL JUDGMENT
PURSUANT TO STIPULATION

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CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2005-62 (Revised)

Consideration Of A New Full Solid Waste Facilities Permit (Transfer/Processing Station) For The California Waste Solutions Material Recovery Facility, Santa Clara County

WHEREAS, the City of San Jose Department of Planning, Building, and Code Enforcement, as the Local Enforcement Agency (LEA), has submitted to the Board for its review and concurrence with, or objection to, a revised full solid waste facility permit for California Waste Solutions Material Recovery Facility; and

WHEREAS, the California Waste Solutions, Inc., as the operator, proposes to operate a large volume transfer/processing facility; and

WHEREAS, the City of San Jose Planning Department, acting as the Lead Agency, prepared and adopted on January 22, 2002 a Negative Declaration (ND), State Clearinghouse (SCH) # 2001122092, and an Addendum to the ND (ER04-003) on December 3, 2004 to comply with the requirements of the California Environmental Quality Act (CEQA); and

WHEREAS, the LEA has certified that the application package is complete and correct and that the proposed revised permit is supported by the CEQA document that was prepared for the project; and

WHEREAS, the Board finds that the proposed permit is ~~is not~~ consistent with the California Environmental Quality Act; and

WHEREAS, Board staff have evaluated the proposed permit for consistency with the standards adopted by the Board; and

NOW, THEREFORE, BE IT RESOLVED that the California Integrated Waste Management Board concurs with ~~objects to~~ the issuance of the Solid Waste Facility Permit No. 43-AN-0024.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on March 15-16, 2005.

Dated:

Mark Leary
Executive Director